

No. 21,551

**United States Court of Appeals
For the Ninth Circuit**

The MT STANDARD OILER and STANDARD
OIL COMPANY OF CALIFORNIA, a corpo-
ration,

Appellants,

vs.

HAMBURG-AMERICA LINE, a corporation,

Appellee.

PETITION FOR REHEARING

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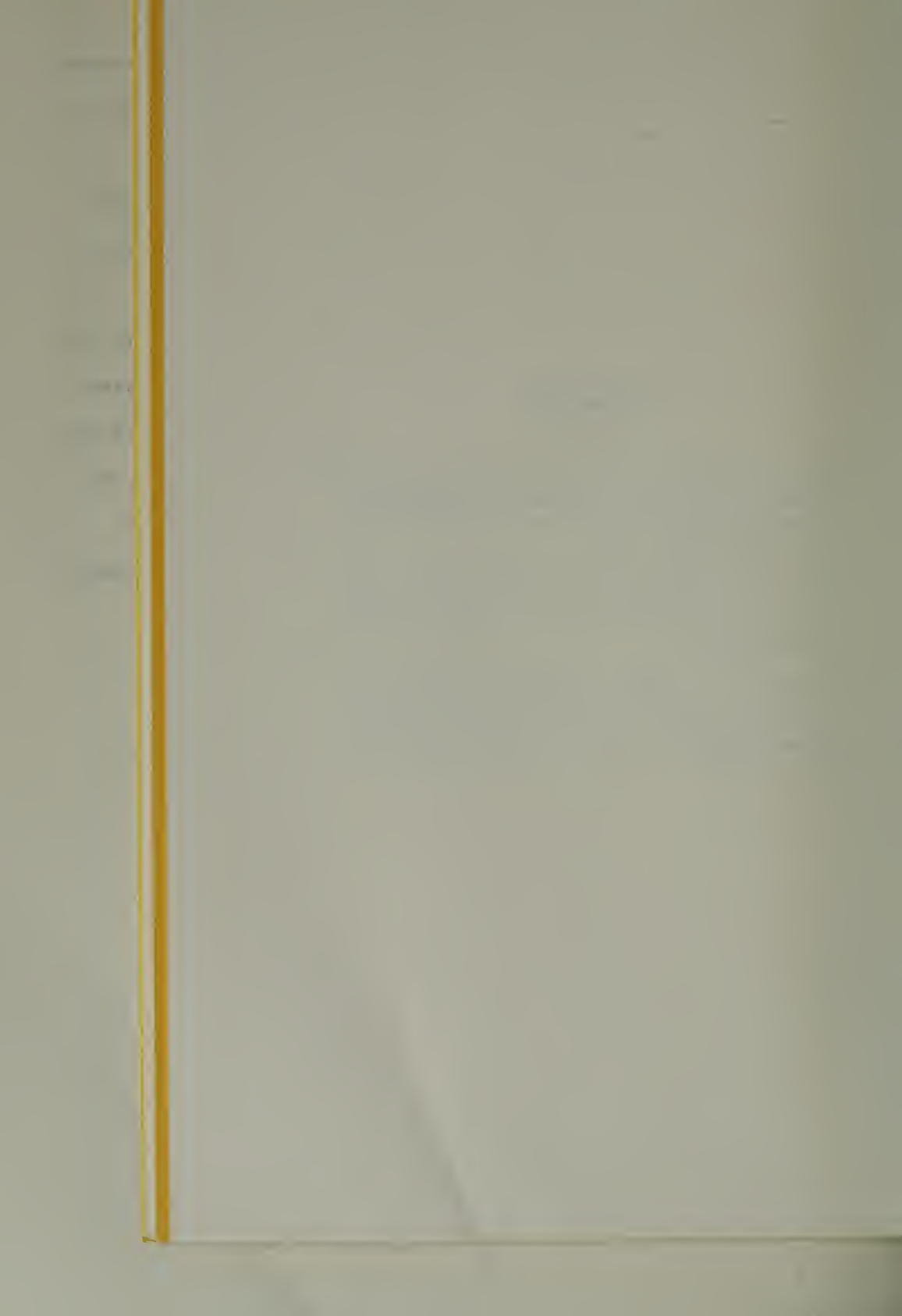
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*To the Honorable Chambers, Pope and Hamley, Circuit
Judges for the United States Court of Appeals for
the Ninth Circuit:*

Appellee Hamburg-America Line, on the below listed grounds, petitions this Court for a rehearing as to its judgment of January 11, 1968 reversing the Trial Court by finding fault on the part of the VOGTLAND:

1. **THE DIAGRAM CONTAINED IN THIS COURT'S OPINION, CLEARLY THE CORNERSTONE OF THE OPINION, IS SO OUT OF PROPORTION AS TO SUGGEST THAT THIS COURT'S OPINION WAS BASED ON AN ERRONEOUS IMPRESSION OF THE RECORD.**

The distances and angles described in this diagram are vitally important since they reflect the basis of this Court's reasoning that the VOGTLAND (improperly)

“practically completely” filled the 300-foot channel. The fixed measurements have at no time been in dispute.¹ However, the diagram indicates material misapprehension of the fundamental facts of the record. The VOGTLAND is shown at double its actual width (precisely 132 feet as opposed to 65 feet) with its length as being over 610 feet (with no end in sight) although its actual length is 500 feet. The buoys are placed 660 feet apart; in fact they were 525 feet apart, which afforded the VOGTLAND, at its angle of approach, a one-third larger “opening” than is depicted on the diagram.

Attached hereto as Appendix I, superimposed upon this Court’s diagram, is a scale drawing intended to precisely show the undisputed measurements, from which can be seen that the VOGTLAND simply did not “fill the channel”.

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2. THERE WAS NO TESTIMONY FROM ANY FACTUAL WITNESS TO THE EFFECT THAT THE VOGTLAND “FILLED” THE CHANNEL—AND SUCH TESTIMONY CERTAINLY WOULD HAVE BEEN FORTHCOMING IF THIS HAD BEEN THE CASE.
 3. IN SUPPORT OF ITS “FILLING THE CHANNEL” CONCLUSION THIS COURT REFERS TO CAPTAIN HULME’S DIRECT TESTIMONY, BUT IT IS EVIDENT THAT THE TRIAL COURT WAS INFLUENCED PRIMARILY BY THIS WITNESS’S RETRACTION (AND OTHER EQUIVOCATION) UNDER CROSS EXAMINATION.

In his direct testimony Captain Hulme, an expert witness called by the STANDARD OILER and referred to in this Court’s opinion as “an old time pilot familiar

¹Citations to the Transcript for the fixed measurements are at p. 2, Appellee’s Brief.

with this area,"² stated that the VOGTLAND would "utilize a good portion of that opening" (Tr. 267). On cross, upon being asked to demonstrate at the blackboard exactly how the VOGTLAND would "take up" the opening, Captain Hulme began by confessing:

"Well, please understand I don't know exactly how wide and close she was to the buoy, but * * *" (Tr. 278, lines 3-4),

continued by drawing the VOGTLAND far too large in scale, drew an erratic 30° change in course which did not occur and had her run over buoy 18A, which she did not (Tr. 277-9, 281), and concluded as follows:

The Court: The ship, taking the course you have indicated, wouldn't be taking up practically the entire distance?

Witness: No, Sir. (Tr. 279, lines 15-18).

It is obvious that the Trial Court, having had opportunity to observe Captain Hulme (whose qualifications and candor were, under cross, placed very much in doubt),³ simply did not believe his direct testimony [but apparently accepted his unguarded statement that he saw

²Opinion, p. 5.

³On direct, Captain Hulme purported to have experience with and be an expert with respect to vessels "similar" to the VOGTLAND and testified that the VOGTLAND's stopping time would have been three minutes (from full ahead to dead stop, reversing engines) (Tr. 261, 269); on cross, he first refused to name vessels that he had piloted that were "similar" to the VOGTLAND, then equivocated saying he had not done so since 1962 and had difficulty remembering, and then admitted that he would not be surprised if the VOGTLAND's stopping time were in fact six minutes twenty-nine seconds (Tr. 271-4).

When asked in how many vessel accidents he had been involved that had been the subject of U. S. Coast Guard proceedings, Captain Hulme said "two to three times" (Tr. 282); upon prompting he admitted to four (Tr. 284).

nothing wrong with the actions taken by the VOGTLAND (Tr. 276-7)].

This Court does competent seamen everywhere a disservice if it maintains that it is fault for a 65-foot wide vessel to pass a 30-foot wide vessel in a 300-foot wide channel, particularly where the channel boundaries are in fact 525 feet apart.

For the foregoing reasons, Appellee submits that this Court erred in reversing the judgment of the Trial Court and requests a rehearing.

Dated, San Francisco, California

February 7, 1968

Respectfully submitted,

GRAHAM & JAMES

WALTER M. SCHEY

*Attorneys for Appellee
and Petitioner*

CERTIFICATE OF COUNSEL

I certify that I believe this Petition to be well founded and that it is not interposed for delay.

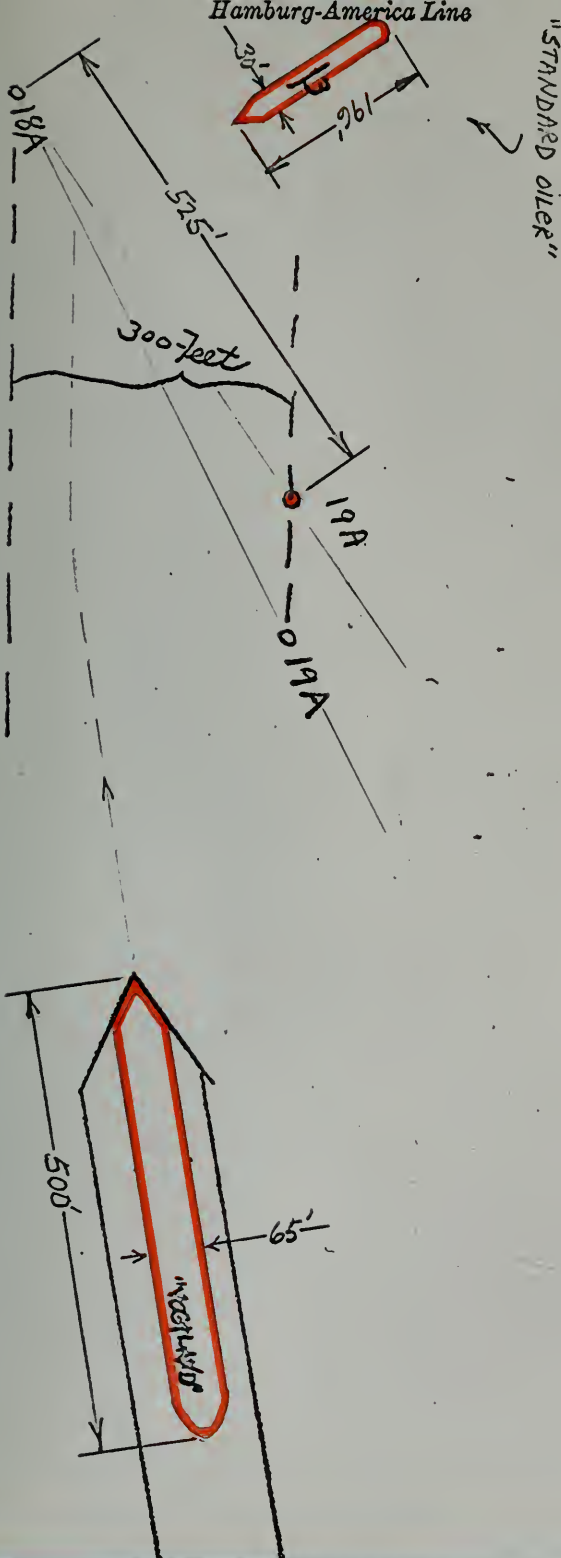
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Appendix I Follows

Appendix





Appendix I

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